ORDERED.

Dated: August 20, 2020

Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Derrel Leonard Thomas and
Precious Nicole Thomas,

Debtors.
_____/

Case No. 8:19-bk-04762-CPM

Chapter 7

ORDER DENYING MOTION FOR RECONSIDERATION OF 1) ORDER DENYING SANCTIONS AND 2) DENIAL OF DISCHARGE

THIS CASE came on for consideration of Derrel Leonard Thomas' motion (the "Motion for Reconsideration") (Doc. No. 125) seeking reconsideration of the Court's order (Doc. No. 122) denying the Debtors' motion to impose sanctions against Amscot Corporation ("Amscot") for alleged violation of the automatic stay and reconsideration of the Court's order (Doc. No. 99) denying a discharge as to Mr. Thomas only,[1] and the objection to the Motion for Reconsideration (the "Objection") (Doc. No. 129) filed by Amscot.

The Motion for Reconsideration cites no legal authority for the Court to reconsider the two orders (the "Orders") referenced above. However, regardless of whether Mr. Thomas seeks relief under Rule 59 or Rule 60, Federal Rules of Civil Procedure (applicable to these contested

matters under Rules 9023 and 9024, Federal Rules of Bankruptcy Procedures, respectively), the Motion for Reconsideration fails to provide grounds to support reconsideration of the Orders.

Under Rule 59, a court may alter or amend a judgment only to: (1) account for an intervening change in controlling law; (2) consider newly available evidence; or (3) correct clear error or prevent manifest injustice.[2] Reconsideration under this rule is an "extraordinary remedy to be employed sparingly" due to interests in finality and conservation of judicial resources.[3] The function of a Rule 59 motion is not to ask the court "to rethink what it has already thought through—rightly or wrongly."[4] Here, the Court finds that the Motion for Reconsideration fails to describe a change in law or newly discovered evidence. And although the Motion for Reconsideration asserts that the Court misapplied the law, it does not support a finding of clear error or a need to prevent manifest injustice (for reasons discussed more fully below).[5]

Alternatively, under Rule 60, a party may obtain relief from a judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief.[6] As with Rule 59, the only possible basis for relief under Rule 60 is an argument by Mr. Thomas that the Court misapplied the law, i.e., made a "mistake"

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[1] Although the Motion for Reconsideration improperly combines two distinct requests for relief in violation of Bankr. M.D. Fla. R. 9013-1(a), for the sake of judicial economy, the Court will address both requests in this order.

[2] *In re Smith*, 541 B.R. 914, 916 (Bankr. M.D. Fla. 2015) (citing *Kellogg v. Schreiber*, 197 F.3d 1116, 1119 (11th Cir. 1999).

[3] *Id.* (quoting *Mathis v. United States*, 312 B.R. 912, 914 (Bankr. S.D. Fla. 2004)).

[4] *Id.* (quoting *In re The Loewen Group, Inc.*, 2006 WL 27286 (E.D. Pa. Jan. 5, 2006)).

[5] To the extent the Motion for Reconsideration raises new arguments, a motion under Rule 59 should not be used to raise arguments which could, and should, have been raised before the judgment issued. *Dimaria Properties, LLC v. 3400 Atlantic LLC (In re Dimaria Properties, LLC)*, 654 F.App'x 1018, 1020 (11th Cir. 2016) (citation omitted).

[6] *See* Fed. R. Civ. P. 60(b).

within the meaning of subsection (b). The Court finds, however, that no legal mistake was made.[7]

With regard to the order denying sanctions against Amscot, Mr. Thomas continues to argue that Amscot refused to cash a check based on an outstanding debt owed to Amscot[8] and that Amscot's making its provision of service to Mr. Thomas contingent upon payment of this debt violated the automatic stay. However, as correctly explained in Amscot's Objection, because the Debtors had a prior bankruptcy case (Case No. 8:18-bk-4185-CPM) pending within one year of the date of the filing of the current case,[9] the automatic stay terminated by operation of law as to the Debtors and property of the Debtors (as opposed to property of the estate) 30 days after the filing of the current case.[10] The current case was filed on May 21, 2019. Thus, this 30-day timeframe had long since passed by February 4, 2020, the date of Amscot's alleged stay violation.

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[7] Relief under Rule 60(b)(6) is available only in "extraordinary" circumstances where, absent relief, "extreme and unexpected hardship will result." *Galbert v. West Caribbean Airways*, 715, F.3d 1290, 129 (11th Cir. 2013) (citations omitted). The Motion for Reconsideration does not allege such circumstances.

[8] The Debtors' Schedule E/F lists a debt of $576 owed to Amscot.

[9] The referenced prior case was dismissed on May 20, 2019, and the current case was filed on the next day.

[10] 11 U.S.C. § 362(c)(3). With respect to § 362(c)(3), a circuit split exists regarding the extent of the expiration of the stay for a debtor who had one prior case pending within one year of the current case filing, whether that be a sliver of the stay—as to the debtor or property of debtor only—or all of the stay. *Compare Rose v. Select Portfolio Serv.*, 945 F.3d 226, 230 (5th Cir. 2019) (after reviewing the plain language and the context of § 362(c)(3)(A), court adopts "the majority position" and concludes that this provision "terminates the stay only with respect to the debtor") *and Holcomb v. Hardeman (In re Holcomb)*, 380 B.R. 813, 816 (10th Cir. BAP 2008) (relying on the plain meaning of the phrase "with respect to the debtor" and the policies behind the Bankruptcy Code, court concludes § 362(c)(3)(A) does not impact property of the estate, noting that "if Congress meant to terminate the stay in its entirety, it would have done so in plain language as it did in § 362(c)(4)(A)(i).") (citation omitted) *with Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576, 590 (1st Cir. 2018) (after analyzing the statute's text, statutory context, and legislative intent, court concludes that § 362(c)(3)(A) "terminates the entire automatic stay . . . after thirty days for second time filers."). I have consistently held that only a sliver of the stay expires, primarily based on the grammatical construction of the text and application of the statutory construction canon against superfluity and the series-qualifier canon, the latter of which was not discussed by the First Circuit. *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts (2012).

As for the order denying discharge, the Bankruptcy Code clearly states that the court "shall grant the debtor a discharge unless—. . . the debtor has been granted a discharge under this section [727] . . . in a case *commenced* within 8 years before the date of the filing of the petition [in the current case]."[11] Mr. Thomas filed Case No. 8:12-bk-01560-CPM on February 2, 2012, and on November 28, 2012, the Court entered a discharge in that case under § 727. Thus, Mr. Thomas is not eligible to receive another § 727 discharge in any case filed prior to February 2, 2020. Because the current case was filed on May 21, 2019, Mr. Thomas may not receive a discharge in this case. The conversion of the current case from a case under chapter 13 to a case under chapter 7 has no legal effect on his ineligibility to receive a discharge in this case because conversion "does not effect a change in the date of the filing of the petition, *the commencement of the case*, or the order for relief."[12]

Accordingly, it is

ORDERED that the Motion for Reconsideration is denied and the Objection is sustained.

The Clerk is directed to serve a copy of this order on the Debtors and interested non-CM/ECF users.

[11] 11 U.S.C. § 727(a)(8) (emphasis added).
[12] 11 U.S.C. § 348(a) (emphasis added).